

REMARKS

Applicant thanks the Office for the Office Action dated February 18, 2004.

Claims 1, 2 and 4-49 are pending and rejected in this application. By this amendment, applicant cancels claims 10, 11, 33 and 34, amends each remaining claim, and adds new dependent claims 50-59 and new independent claims 60 and 61.

In view of the foregoing amendments and following remarks, reconsideration is respectfully requested.

Response to Examiner's Position Concerning Applicant's Declaration under 37 CFR 1.131

The examiner has concluded that Applicant's previously submitted Declaration under 37 C.F.R. 1.131 is insufficient to overcome the Ausems et al. reference (6,424,403 B1). Applicant respectfully traverses the finding of the examiner and sets forth the following remarks to expressly contradict the findings and conclusions of the patent examiner. In view of these remarks, Applicant requests the examiner to reconsider her findings and conclusions. Additionally, applicant reserves the right to file supplemental Declarations and/or evidence for the purpose of swearing behind the Ausems et al. reference.

The examiner has stated that Applicant's Declaration is deficient for proving prior conception on several grounds. These are addressed in turn.

Relative to Applicant's service mark application, the examiner contends that "there is no evidence that he and/or he alone conceived of the services associated with the mark". Applicant disagrees. Applicant is named as the owner of the service mark application. Additionally, there is nothing to indicate that applicant is not the one or the only one to conceive of these services. The Declaration in this application states that Applicant is the sole inventor,

and the evidence of this trademark application supports and corroborates that fact. The examiner's requirement for some additional evidence is not supported by the law or rules.

Secondly, the examiner contends that the Declaration is deficient on the grounds that (a) the trademark application was filed on an "intent to use" basis, (b) that intended uses recited in the trademark application are "advertising and in other manners customary to the trade", (c) that the claims in this patent application "are not in any way shape or form directed to advertising", and (d) that "Applicant did not state what he believed were 'customary to the trade'". The examiner then concludes that "[a]s this was an 'intent to use' there is no evidence to show or establish anything other than advertising."

While the factual statements in the statements (a)-(d), as Applicant has alphabetized them, are true, these points do not support the examiner's conclusion that the Declaration is deficient. While it is true that the trademark application expressly evidences use of the trademark only on advertising and in other customary manners, the examiner's logical progression stops too soon, because it is on advertising and in other customary manners (i.e., signage, screen displays, clothing and apparel, websites, brochures, etc.) through which the mark was intended to be used on or in conjunction with the services. Indeed, the trademark application expressly recites that the Applicant intends to use the mark "*in commerce on or in connection with the above-identified services*". Accordingly, this trademark application provides a direct nexus, *prior to the filing date of Ausems et al.*, between the applicant and services which encompass the invention that is claimed in the present patent application. Given that the trademark application is a public record, it is highly credible to establish a priority date and applicant believes that it should be reconsidered.

In the third and fourth instances, the patent examiner contends that the Declaration is deficient because the Trademark Examining Attorney deemed the recited services indefinite for trademark application purposes. The position of the Trademark Examining Attorney for trademark purposes does not demonstrate a lack of support for conception of the present invention. The fact that the Trademark Examining Attorney desired an amended recitation of services does not negate the facts relied upon by Applicant.

Indeed, in the initial Office Action of July 19, 1999, still prior to the filing of this patent application, the Trademark Examining Attorney did NOT question the meaning of the recited services in question here, despite the fact that she did question the meaning of other recited services. Further, the Trademark Examining Attorney suggested as an amendment for Class 35 services inserting “Computerized on-line retail services in the field of [indicate field of goods]”. Applicant timely responded to that suggestion on January 19, 2000 by including a service description, modified from that suggested by the Trademark Examining Attorney, which includes “services *in the nature of enabling customers to purchase a wide variety of goods and services of others*”, which is precisely one function of the presently claimed invention.

Also, Applicant points out, in response to the patent examiner’s challenges to the Declaration’s sufficiency based upon indefiniteness of the trademark application, that Applicant exercised caution to not describe services too specifically in the trademark application owing to the fact that the trademark application would be published and this patent application (and others) were not yet on file. Applicant did not wish for his conceived inventions to be known in their entirety to the public. Additionally, it is conventional practice in trademark prosecution practice to recite goods and services as broadly as possible because the goods/services recitation

can always be amended to be more limiting, but cannot be amended to be more encompassing.

Additionally, for clarity, Applicant also notes that to the extent the patent examiner is relying upon the fact that the trademark application was filed as a single class application and that applicant was being required by the Trademark Examining Attorney to declare multiple classes, Applicant traverses that position. Applicant ultimately chose to restrict this application to a single class, embodying those services applicant believed would be the first to market, in order to prevent having to pay the substantial filing fee associated with each separate classification of services.

Concerning diligence, as with the sufficiency of the Declaration to establish a priority date to the cited reference, Applicant reserves the right to provide supplemental Declarations and/or evidence. However, Applicant also requests that the patent examiner reconsider diligence in light of the evidence already submitted. In that regard, the examiner relies heavily on the prosecution of the trademark application in support of her position. Applicant submits that the trademark prosecution supports applicant's position rather than defeats it. In that regard, the prosecution of the trademark application continued from filing of the trademark application through and past the filing of this patent application. As pointed out above, the Trademark Examining Attorney did not question the subject goods recitation in her Office Action in July 1999, but suggested some alternative language which Applicant adopted in a modified form to encompass the features of the presently claimed invention. Thus, the trademark prosecution history for timeframe relevant to this patent application reveals ongoing and timely exchange with the Patent and Trademark Office of a nature that evidences and supports Applicant's prior conception and diligence.

Lastly, Applicant wishes to bring to the examiner's attention that Applicant has a co-pending patent application pending on claimed subject matter unrelated to the present application, namely U.S. Patent Application Serial No. 09/.721,120, filed November 22, 2000, entitled System, Method and Device for Playing Recording Music on a Wireless Communications Device. In that application, applicant submitted a Declaration similar to the Declaration in the present application and it was deemed sufficient to overcome an antedated reference. While applicant, based upon a study of the rules and applicable law, does not believe he has a duty to disclose this fact, applicant discloses it in order to meet any and all possible duties of candor and good faith and also because Applicant believes that it further evidences the merit in his position. Applicant is also informing the examiner of the '120 application of the existence of this application and of the nature of this patent examiner's conclusion relative to the Declaration filed in this application.

Based upon the foregoing, it is believed that the present application should be allowed. Additionally, however, in order to advance prosecution of the present application, Applicant has amended the claims to overcome the teachings of Ausems et al, but Applicant reserves the right to file a continuation application on previously rejected subject matter.

Response to 35 USC Section 112 Rejection

The examiner has noted Applicant's use of "Bluetooth" in the specification and that "Bluetooth" is the subject of a pending federal trademark registration. As suggested by the examiner, applicant has double-checked that all uses of "Bluetooth" are capitalized in the specification. Additionally, applicant has striven to amend the specification after each occurrence of "Bluetooth" to include the suggested terminology "short-range wireless

connection”.

1. In enumerated paragraph No. 1 of the Office Action, the examiner has rejected claims 11, 13, 34 and 36 under 35 USC 112, first paragraph. Prior to this amendment, claims 11 and 34 recited “RFID” and claims 34 and 36 recited “wi-fi”. Applicant has cancelled claims 11 and 34. Regarding claims 13 and 36, Applicant has amended claims 13 and 36 to recite “wireless local area network”, which is generic terminology for a local area network such as Wi-Fi.

2. In paragraph No. 2 of the Office Action, the examiner rejected claims 1 and 2 under U.S.C. 112, second paragraph. In Applicant’s last response, Applicant inadvertently listed claim 1 as amended, when it was not amended. The examiner was correct to interpret the claim as unamended. In that same response, Applicant also amended the preamble of claim 2 to state “A system comprising” rather than “A *device* comprising”, but failed to mark the change. By this amendment, applicant has corrected these inconsistencies. In particular, claims 1 and 2 now each recite “A device comprising”, and each of claims 1 and 2 is presently amended and properly identified as such.

3. In paragraph No. 3 of the Office Action, the examiner contends that claims 12, 13, 35 and 36 do not comply with 35 U.S.C. 112, second paragraph because of their recitation of the trademarks “Bluetooth” and “Wi-Fi”. Applicant has corrected these issues. In that regard, claims 12 and 35 (Bluetooth) have been amended to recite “short-range wireless link”, of which a link made according to the Bluetooth specification is a type. Claims 13 and 36 (Wi-Fi) have been amended to recite “wireless local area network” of which Wi-Fi is a type.

Response to 35 USC Section 102 Rejections

Claim 1, as amended, is directed to a portable, wireless voice and data communications unit. The unit has a processor, a memory and a transmitter which are collectively operable to perform voice and data communications functions of the wireless communications unit. The memory has data indicative of monetary units stored in it. During a purchase transaction at a point of sale terminal, data indicative of a selected amount of monetary units associated with said purchase transaction is wirelessly sent from said unit to said point of sale terminal.

Claim 2, as amended, is similar to claim 1, but has data indicative of an account stored in memory rather than data indicative of monetary units (claim 1).

4. In paragraph No. 4 of the Office Action, the examiner rejected claims 1-2, 4-5, 7, 9, 10, 12, 14, 16, 21, 24, 27, 28, 30, 32, 33, 35, 37, 39, 44 and 47 under 35 U.S.C. 102(e) as being anticipated by Ausems, et al. (6,424,403 B1). This rejection is respectfully traversed in view of the comments made above concerning applicant's Declaration and also in view of the amendments and remarks made herein. Reconsideration is respectfully requested.

Ausems et al. teach integration of a wireless telephone engine, a smart-card engine, and a Personal Digital Assistant (PDA) engine into a single device. The device teaches use of a separate smart-card having a smart-card chip for placement into a smart-card slot and then indicates, in a single sentence, that the smart card engine may itself include one or more smart-card chips. (Col. 4, l. 39-50; Col. 6, l. 19-59). Thus, at best, Ausems et al. teaches a device capable of smart-card operation that has a separate smart-card processing engine having

its own memory chip for storing smart card information. During operation, *the smart-card engine* “reads the card account information and transmits it to the point of sale terminal” (Col. 6, l. 36-38).

In direct contrast to Ausems et al., the presently claimed invention does not require or have a separate smart-card processing engine or a separate memory for storing smart-card information. Rather, the advantage of the presently claimed invention is that it does not involve a device specially adapted with a smart-card reader or smart-card engine and chip, but utilizes components present in conventional wireless voice and data communications devices. In that regard, claims 1 and 2, as amended, each include the limitation of a memory having data indicative of monetary units (claim 1) or account information (claim 2) stored therein, where data from the memory is transmitted to a point of sale terminal as part of a purchase transaction. As claimed, and in direct contrast to Ausems et al. which teaches separate engines for communications and transactions, the memory of the presently claimed invention is also operable with the processor and transmitter to perform voice and data communication functions. Accordingly, Ausems et al. teach away from the presently claimed invention.

Additionally in this regard, Applicant respectfully traverses the examiner’s position and comments in each of footnote Nos. 7-10 (and correspondingly footnote No. 11) of the Office Action to the extent they are construed as Applicant understands them.

Concerning footnote No. 7, there is no teaching or suggestion in Ausems et al. that the memory holding the financial data is anything other than the smart-card chip. The smart-card chip is a separate chip embodied only as part of the smart-card engine. Thus, the smart-card memory chip holding the financial data in Ausems et al. is not part of the PDA engine or (any

other engine). Indeed, it is clear that PDA engine 290 has its own memory components (see Fig. 3) that are distinct from the smart-card memory chip of the smart card engine 260. Ausems et al. teach the functions of the memory components (RAM 310, ROM 315, EEPROM 320) (see Col. 7-8, 1.60-6) and nowhere does Ausems et al. teach or suggest that these memory components store the smart-chip information for use by the smart-card engine.

Applicant also denies (also in footnote No. 7) that the transmitter is a part of the wireless telephone engine *and* the smart card engine. There is no teaching or suggestion in Ausems et al. to support that position of the examiner. Indeed, Ausems et al. teach, to the contrary, separate and distinct engines which communicate with each other, and Fig. 2 of Ausems et al. shows that while the transmitter is connected to both the smart card engine and the wireless phone engine, it is not a part of each engine.

Regarding footnote No. 8, the examiner contends that data indicative of monetary units is transmitted to either a POS (or associated processor) via any one of the engines set forth. There is nothing in Ausems et al. that supports that conclusion. While the various engines in Ausems et al. can communicate with *each other*, Ausems et al. teach that the *smart card engine* must communicate with a POS terminal. Clearly, in Ausems et al., without operation of the separate and distinct smart-card engine, no financial data can be transmitted to a POS terminal no matter how many other engines are invoked.

Regarding footnote Nos. 9 and 10, Applicant understands the examiner's comments to be provided because of her uncertainty of what processor was being claimed. It is believed that the present amendments alleviate that uncertainty, and that the comments in these footnotes are now moot. In that regard, Applicant has amended claims 1 and 2 to make it clear

that the claimed processor is in the portable unit. It is understood that the POS terminal will have a processor, whether it be positioned locally with other components of the POS or remotely therefrom, and claims 1 and 2 are intended to cover communication with a POS and/or its processor (no matter where it may be located). If the examiner's comments in footnote Nos. 9 and 10 are intended to mean or suggest something more than what Applicant understands them to be and are still deemed by the examiner to be applicable following this amendment, then Applicant requests clarification from the examiner and Applicant reserves the right to address and possibly traverse those comments.

As per claims 16 and 39, while Ausems et al. teach voice/speech recognition to initiate commands and access data and speech pattern recognition, Ausems et al. does not teach or suggest that the user voice "must be identified . . . before said purchase transaction at said point of sale terminal is completed", as claimed. Accordingly, the examiner's specific rejections of claims 16 and 39 are traversed in light of the present amendment to claims 16 and 39. Claims 16 and 39 are also believed to be allowable by virtue of their dependence from an allowable base claim.

As per claims 14 and 37, Applicant traverses the examiner's conclusion that Ausems et al. teach (citing col. 7, lines 17-32) transmission of data indicative of a selected amount of monetary units via a cellular link. It appears that Ausems et al. teach only transmission of monetary or account data via a short range wireless link.

As per claims 24 and 47, Ausems et al. does not teach or suggest that a "transaction is completed while said unit is communicating via a voice link with said point of sale terminal", as claimed. While Ausems et al. teach dialing a phone number to carry out a

transaction (Col. 7, l. 17-32), there is no indication that the transaction occurs during a “voice link”. Additionally, see the Applicant’s applicable discussion below concerning claims 25 and 48.

Response to 35 USC Section 103 Rejections

5. In paragraph No. 5 of the Office Action, the examiner rejects claims 25 and 48 under 35 U.S.C. Section 103(a) as being unpatentable over Ausems, et al. (6,434,403 B1). The rejection of claims 25 and 48 is respectfully traversed.

Each of claims 25 and 48 is believed to be allowable by virtue of its dependence from an allowable base claim. Additionally, as recited in claims 25 and 48 (respectively), “data indicative of a selected amount of monetary units (said account) is transmitted at least substantially simultaneously with a voice communication from said unit to said point of sale terminal or to a server or to an operator associated with said point of sale terminal.” Nothing in Ausems et al. teaches or suggests that data indicative of a selected amount of monetary units can be transmitted with a voice communication.

Indeed, Ausems et al. appear to teach only that the smart-card engine is configured to communicate with point of sale terminals via a short-range transceiver, not via a cellular link and certainly not during a voice call. In that regard, the Abstract of Ausems et al. states that “[t]he smart-card engine is configured to communicate with external devices via a short-range transceiver.” The Summary of the Invention Section of Ausems et al. states the same thing at column 1, lines 59-60. At column 6, lines 19-44, Ausems et al. teach transmitting information stored on a smart card chip to a point of sale terminal via a short-range Bluetooth transceiver. In contrast, discussions in Ausems et al. about the wireless phone engine and PDA engine do not

appear to teach transmission of smart-card information. Indeed, the discussion at Column 6, lines 8-59 of Ausems, relied upon by the examiner, clearly does *not* teach or suggest transmitting monetary or account data to a remote point of sale terminal in conjunction with a voice communication. Nothing in Ausems et al. teaches or suggests that a dialed party is a point of sale terminal, as claimed. Indeed, any discussion in Ausems et al. concerning dialing a phone number to carry out a transaction should be construed as nothing more than carrying out the transaction of connecting devices. To the extent the examiner continues to construe dialing phone numbers to carry out a financial transaction, then that transaction should be construed as a conventional transaction or, as described in Ausems et al., the transmission of transaction information stored in the PDA engine to a financial institution, but *not* transmission of data indicative of a selected amount of monetary units or a account information to a point of sale terminal during a voice communication. Indeed, even the transmission of stored financial information to a financial institution is not taught by Ausems et al. to be in conjunction with a voice communication.

The presently claimed invention offers the unique advantage of permitting a user to call, for example, call a customer representative at a catalogue company or call an order-taker at a restaurant (there are a plethora of examples that could be given) and verbally place an order in a conventional fashion, but pay for the ordered goods or services by wireless transmission of data indicative of monetary units or an account during the voice communications connection. Such an invention offers incredible advantages in efficiency over the prior art, such as relieving the buyer from personally stating his or her account number and requiring the order-taker to key it into a terminal. Such an invention also offers more a more reliable transaction (prevents

misstated or mistyped numbers) and a more secure transaction. The examiner's comments that "the business practice of using a phone with a sales associate in conjunction with a POS device in order to purchase goods or services is an old and established practice" does not support the rejection, since the old and standard practice has shortcomings, lack of technology, and inefficiencies which the present invention overcome.

6. In paragraph No. 6 of the Office Action, the examiner rejects claims 11 and 34, directed to RFID technology, under 35 U.S.C. Section 103(a) based upon Ausems et al (6,434,402 B1) In view of Petsinger (6,131,544) and TIRIS News, Texas Instruments, Issue No. 18, 1998. Pg. 1. Applicant has cancelled claims 11 and 34. However, for the record, Applicant traverses these rejections on the grounds that they do not individually or collectively teach the claimed invention, that there is not motivation or suggestion to combine the teachings of these references, that these references are not analogous art, and that the references teach away from applicant's claimed invention. Applicant reserves the right to file one or more continuation applications directed to the subject matter of claims 11 and 34 (and related subject matter) and expressly reserves the right to submit arguments and remarks in support of patentability, including arguments and remarks directed at the rejection of paragraph No 6 of the Action to which this Amendment responds.

7. In paragraph No. 7 of the Office Action, the examiner rejects claims 15 and 38 under 35 U.S.C. Section 103(a) as being unpatentable over Ausems, et al (6,434,403 B1) in view of Petsinger (6,121,544). In view of the amendments made herein, the rejection of these claims is respectfully traversed.

Claims 15 and 38, as amended, recite that the portable wireless unit has a “keypad input for dialing telephone numbers and entering a personal identification number (PIN), wherein said PIN must be entered into said unit to complete said transaction.” The combination of references relied upon by the examiner do not teach or suggest this claim limitation. While the business practice of using PINs is admittedly old, it is not previously known to employ the standard keypad of a wireless communications unit for PIN entry in order to complete a purchase transaction wirelessly.

Additionally, applicant submits that Petsinger does not even teach how to use a PIN to prevent access to a smart card. Indeed, Petsinger states that “[a]lthough software encryption, PIN numbers and biometrics strive to achieve the same results as the invention presented in [Petsinger], they are so different in their approach that they have not been presented in any detail here.” In any event, Petsinger certainly does not teach or suggest use of a PIN on a wireless communications device of the present invention nor entry of a PIN on a standard keypad found on such a device.

Further, applicant submits that there is no motivation nor suggestion to combine Ausems et al. and Petsinger. Ausems et al. does not teach or suggest PIN use. Petsinger does not teach or suggest use of a PIN in a wireless communications device. Applicant further submits that these two references are nonanalogous art, and reserves the right to submit further remarks on that point in the event the examiner continues to maintain the rejection.

Applicants further believe that claims 15 and 38 are allowable by virtue of their dependence from an allowable base claim.

8. In Paragraph No. 8 of the Office Action, the examiner rejects claims 17-20, 21-

23, and 40-43, 45-46 under 35 U.S.C. Section 103(a) as being unpatentable over Ausems, et al (6,434,403 B1) in view of Morrill, Jr. (5,991,749) or Greg Groeller, Gee Whiz Features Aren't so Remote, Orlando Sentinel, May 2, 1999, pg. H1.

Applicant believes that these claims are allowable by virtue of their dependence from an allowable base claim.

Additionally, Applicant believes that these claims are allowable by virtue of the limitations set forth in them. In particular, the Applicant respectfully traverses the position of the examiner, in Paragraph No. 8 of the Office Action, that "the specific types of terminals does [sic] not patentably distinguish" the claimed device. The examiner has provided no support for that conclusion. Additionally, the combination of references relied upon by the examiner does not teach or suggest a POS terminal being (at least) a fast-food drive through, gas pump, a television or on-line store.

Applicant particularly points out that a drive through point of sale terminal is a particular type of terminal and terminal setting to which the present invention is uniquely and nonobviously adapted. Drive through windows suffer from through-put issues and the difficulty of a driver being occupied with the vehicle. Clearly, the art of record does not even contemplate use of a portable wireless voice and data communications device for making payments at a drive-through window terminal.

Applicant also particularly points out that an interactive television is a particularly type of terminal and terminal setting to which the present invention is uniquely and nonobviously adapted. Nothing in these references teaches or remotely suggests using a portable wireless communications device to transact purchase transactions on an interactive television.

Applicant also particularly points out that an online store is a particular type of terminal and terminal setting to which the present invention is uniquely and nonobviously adapted. The art relied upon by the patent examiner does not teach or suggest making purchases at an online store with a wireless communications device in the manner claimed.

The examiner contends that “the type of terminal taught by Ausems et al, is generic and specifically taught to be adaptable”. Applicant respectfully disagrees. Ausems et al. teaches “a checkout counter” to which the user must “proceed”. (Col. 6, l. 32.). Applicant finds nothing in Ausems et al. that teach that the POS terminal is adaptable. Even if it is assumed that the POS of Ausems et al is adaptable (not conceded), Applicant finds nothing in Ausems et al.’s teachings that it could be adapted to a drive-through window terminal, an interactive TV, or an online store, each of which are vastly different terminals than anything taught or suggested in Ausems et al. or the art combined with Ausems et al.

The examiner further contends that “the functionality does not change with the type of the point of sale terminal.” Again, applicant respectfully disagrees. Each of these three particular types of terminals may involve differences in connectivity, protocols used, information transmitted to the portable device, etc. In other words, these three particularly referenced POS terminals are not just of different types, but are of such entirely different categories that functionality is likely to be different. As a one example, functionality at a drive-through window may (but need not) involve a short-range wireless link for transmitting simple, non-complex payment and receipt data. In contrast, connectivity to an online store POS may (but need not) involve transmission of more complex data requiring different protocols than used at the drive-through window.

Regarding Groeller, Applicant further notes that Groeller was allegedly published only three months before the earliest filing date of this application. Accordingly, Groeller is not admitted as prior art and applicant submits that his Declaration overcomes this reference.

Further, Applicant reserves the right to file supplemental Declarations and/or evidence for the purpose of antedating Groeller. Applicant also notes that Groeller, like Revett (discussed below) merely *predicts*, in a highly general fashion potential, future features for wireless devices. No details are provided as to how to accomplish even the broad and undefined features discussed in Groeller. If anything, Groeller points to the need for inventions like the present one and only supports patentability of the present invention.

9. In paragraph No. 9 of the Office Action, the examiner rejects claims 6, 8, 29 and 31 under 35 U.S.C. Section 103(a) as being unpatentable over Ausems et al. (6,434,403 B1) in view of M C Revett and G J South, Consumer devices for eCommerce Access, CBT Technology Journal, ABI/Inform Global, Vol. 17, No. 3, July 1999, pp 112-123.

Initially, in the second paragraph under Paragraph No. 9 of the Office Action, the examiner denoted claim 28 instead of 29. It is assumed that the examiner meant claim 29.

Applicant believes that claims 6, 8, 29 and 31 are allowable in view of their dependence from an allowable base claim. With respect to the limitations of these claims specifically, the examiner acknowledges that Ausems et al. do not teach nor suggest that the portable device could be a laptop or a notebook or a pager, but contends that Revett teaches that such a device could be a laptop, a notebook or a pager.

With respect to claims 6 and 29 particularly, which recite a laptop or notebook, nothing in Revett teaches or suggests that the laptop or notebook mentioned in Revett has

wireless capability. Given that the article generally discusses *predictions* for eCommerce access devices that are alternatives to personal computers (PCs), including ATMS, set-top boxes, a variety of telephones, etc., the only proper reading Revett is that the recited laptops and notebooks would be conventionally connected to a network via a physically wired connection, such as a cable/modem connection.

Additionally, there is nothing in Revett to teach or suggest storing financial information in a memory that is also used for voice and data communications functions. To the extent that Revett references “smart-cards”, it is only in conjunction with security and should not be deemed to fairly teach use of financial based smart cards. Even if it is assumed that such “smart-cards” as referenced in Revett included financial information (which Applicant does not concede) and that the teachings of Revett and Ausems et al. can be properly combined (not conceded), the result still does not teach the presently claimed invention, because the result would be a laptop or notebook having a separate smart-card engine and smart-card memory chip. This also holds true for the pager of claims 8 and 31.

Additionally, Revett (which was allegedly published in the month before the present application was filed) is merely *predicting* access to eCommerce services via a wide range of devices. There is no teaching in Revett of how this will be accomplished. If anything, Revett merely points to the need for inventions like those presently claimed.

In view of the foregoing, it is believed that these claims are allowable by virtue of their dependence from an allowable base claim and by virtue of the additional limitations set forth in the claims. Further, Applicant believes that its previously submitted Declaration is sufficient to swear behind Revett and Applicant expressly reserves the right to submit additional

Declarations and/or evidence for the purpose of swearing behind Revett.

10. In paragraph 10, of the Office Action, the examiner rejects claims 13 and 36 under 35 U.S.C. Section 103(a) as being unpatentable over Ausems et al. (6,434,403 B1) and M C Revett and G J South, Consumer Devices for eCommerce Access CBT Technology Journal, ABI/Inform Global, Vol 17, No. 3, July 1999, pp. 112-123 and further in view of Wireless Ethernet Compatibility Alliance (WECA Announced Independent Test Lab and Wi-Fi Technology Brand, September 15, 1999 (Press Release).

Applicant respectfully traverses these rejections for the reasons set forth above and believes that each of these claims is allowable because it depends from an allowable base claim.. Additionally, Applicant notes that he cannot find a copy of Press Release in the materials submitted by the Office. In any event, it appears that Press Release was published on September 15, 1999, in which case it is not prior art to this application. This Application claims priority to a Provisional Application filed on August 10, 1999. The Provisional Application specified use of wireless local area networks. (See pg. 11, l. 14-21). Accordingly, the rejection in paragraph 10 of the Action should be withdrawn for this additional reason.

Additionally, although Applicant has not had an opportunity to review Press Release, the examiner does not recite anything which suggests that Press Release teaches or suggests use of a wireless LAN for the purposes claimed herein. The fact that, as the examiner notes with reference to Press Release, “as more and more companies develop Wireless Lan products, the need to insure interoperability becomes critical . . . (and following) . . .” does not in anyway support the examiner’s conclusion that it would have been “obvious . . .to have utilized a Wi-Fi link in Ausems/Revett as taught in the Press Release[.]”

Given that Applicant has not reviewed the Press Release and that it appears not to be prior art, Applicant believes that no further remarks need to be made. However, Applicant reserves the right to submit additional remarks concerning this rejection should Applicant learn that the Press Release actually bears a publication date other than that identified in the Office Action, including remarks directed to the impropriety of combining the cited references.

11. In paragraph 11 of the Office Action, the examiner rejects claims 26 and 49 under 35 U.S.C. Section 103(a) as being unpatenable over Ausems et al (6,434,403 B1) in view of Ching (L6,533,168).

Applicant believes that claims 26 and 49 are allowable by virtue of their dependence from an allowable base claim. .

Additionally, Ching is not prior art to the present application. Ching was filed on May 26, 2000, well after the August 10, 1999 earliest filing date of the present application. Additionally, a careful review of the U.S. Provisional Patent Application No. 60/136,642, on which Ching claims priority, reveals that there is no discussion in the provisional filing concerning transmission of receipts to a cellular phone, a PDA, or other similar type of device. Rather, subject matter concerning a cellular phone, PDA, etc., which is the subject matter on which the examiner relies upon in Ching, was not introduced into Ching until *after* Applicant's earliest filing date. Indeed, the only embodiment in the Ching provisional appears to be a scanner for scanning a paper receipt.

Accordingly, the rejection should be withdrawn. Additionally, applicant believes that no motivation exists for combining Ching and Ausems et al., that the combination thereof does not teach the invention claimed in claims 26 and 49, that Ching and Ausems et al are

nonanalogous art, and that Applicant could properly swear behind Ching's earliest filing date, if necessary. While Applicant expressly reserves the right to take such additional actions, it should not be necessary to do so given the circumstances.

Newly Added Claims

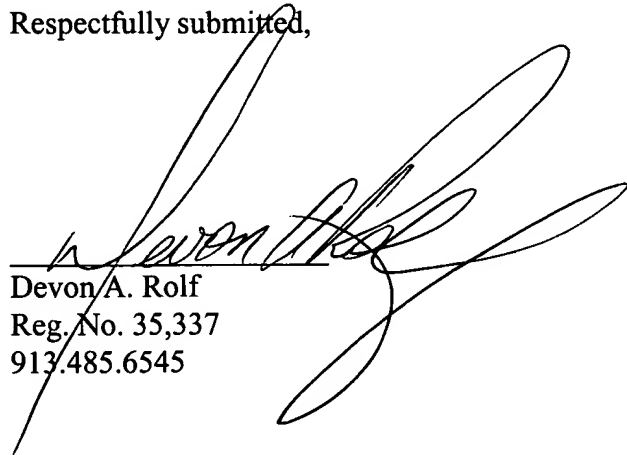
Claims 50-63 have been added. Entry of these claims is requested.

Other Art

Applicant does not admit that WO 00/79771 A1 is prior art or that it or US 5,739,512 is pertinent to applicant's disclosure.

It is believed that this application is in condition for allowance. Such action is respectfully requested. The examiner is welcome to contact the applicant by telephone, at the number listed below, if the examiner believes a telephone communication would advance prosecution.

Respectfully submitted,



Devon A. Rolf
Reg. No. 35,337
913.485.6545

Address:

Devon A. Rolf
c/o Uneeda Royer
11924 East 57th Street
Kansas City, MO 64133